

Application No. 10/750,253

Response dated October 30, 2007

Reply to Office Actions of April 26, 2007 and October 1, 2007

### REMARKS

Claims 1-45 are presented for Examiner Craig's consideration. Claims 1, 17, 32 and 45 have been amended to require that the elastic inner layer is continuous, the opening is a slit or aperture, and the lateral extensions are C-folded or Z-folded prior to attachment to the exterior surface of the elastic inner layer. Support for these amendments can be found throughout the specification including, page 5, line 21; page 12, line 9; page 16, lines 10-13; and Figs. 1, 2, 6, and 6A. No new matter has been added.

Furthermore, Applicants direct Examiner Craig's attention to copending patent application 10/750,402 which was filed on December 31, 2003 and is directed to subject matter that is related to subject matter of the present application. Application 10/750,402 is pending before Examiner Chapman. Patent application 10/750,402 was disclosed to the USPTO in the present case via an Information Disclosure Statement (IDS) dated June 16, 2004. During prosecution of application 10/750,402, claims with subject matter similar to those pending in the present case were rejected based on U.S. Patent 6,193,701 to Van Gompel et al. and U.S. Patent Application 2002/0072726 to Mishima. Van Gompel and Mishima were disclosed to the USPTO in the present case via an IDS dated October 7, 2004 and an IDS dated September 6, 2006 respectively. By way of these remarks, the rejection of copending application 10/750,402 in view of Van Gompel and Mishima is being disclosed herein to Examiner Craig.

Applicants respectfully submit that the present claims are patentably distinct over Van Gompel and Mishima. Thus, by disclosing Examiner Chapman's rejection, Applicants in no way admit that Van Gompel or Mishima is effective as prior art against the present application under either 35 U.S.C. 102 or 35 U.S.C. 103. Additionally, disclosure of Examiner Chapman's rejection is not to be taken as an admission of the materiality of the documents or the rejection with regard to the prosecution of the present application.

Pursuant to 37 C.F.R. § 1.114, reconsideration of the present application in view of the foregoing amendments and remarks and the following arguments is respectfully requested.

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### ARGUMENTS

**Claims 1-12, 16-28, 31 and 45 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Suprise.**

**Claims 14, 15, 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being obvious and therefore unpatentable over Suprise.**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); *see also Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Also, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

Applicants respectfully submit that Suprise does not set forth each and every element of the claims as currently presented and thus does not anticipate or render obvious said claims.

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Independent claims 1, 17, 32, and 45 currently require, inter alia,

- a continuous elastic inner layer
- an opening in the elastic inner layer that is a slit or aperture
- an absorbent assembly attached to the exterior surface of the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer, and wherein the topsheet layer and barrier layer have lateral extensions that are C-folded or Z-folded prior to attachment to the exterior surface of the elastic inner layer.

Suprise does not teach a continuous elastic inner layer.

Suprise does not teach a "continuous" elastic inner layer as required by currently presented claims 1, 17, 32, and 45. The Examiner asserts that the "elastic inner layer" of Suprise is comprised of the waist flaps 80 and 82 and the containment flaps 100 and 102 collectively. (OA dated 7/18/2006, page 3). Even assuming, arguendo, that said combination of components creates an "elastic inner layer" as asserted, the "elastic inner layer" of Suprise is not "continuous" as currently claimed. A continuous layer is not constructed of two or more pieces as discussed at page 13, lines 9-13 of Applicants' specification. Thus, Suprise fails to anticipate or render obvious Applicants' claims 1, 17, 32, 45, and those claims depending therefrom for at least this reason.

Suprise does not teach an opening that is a slit or aperture through the elastic inner layer.

Suprise does not teach "a slit or aperture" through the elastic inner layer as required by currently amended claims 1, 17, 32, and 45. The Examiner asserts that the opening is the space between waist flaps 80 and 82 and between containment flaps 100 and 102 (OA dated 7/18/2006, page 3). Clearly this "space" between the waist flaps and the containment flaps is not a "slit or aperture" through the elastic inner layer. Thus, Suprise fails to anticipate or render obvious Applicants' claims 1, 17, 32, 45, and those claims depending therefrom for at least this reason.

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Suprise does not teach an absorbent assembly attached to the exterior surface of the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer, and wherein the topsheet layer and barrier layer have lateral extensions that are C-folded or Z-folded prior to attachment to the exterior surface of the elastic inner layer.

Currently amended claims 1, 17, 32, and 45 now require that the topsheet layer and barrier layer (of the absorbent assembly) have lateral extensions that are C-folded or Z-folded prior to attachment to the exterior surface of the elastic inner layer. Suprise does not teach this element. Thus, Suprise fails to anticipate or render obvious Applicants' claims 1, 17, 32, 45, and those claims depending therefrom for at least this reason.

**Claims 13 and 32-44 stand rejected under 35 U.S.C. § 103(a) as being obvious and therefore unpatentable over Suprise in view of Freeland.**

As discussed above, Suprise fails to teach an absorbent assembly attached to the exterior surface of the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer, and wherein the topsheet layer and barrier layer have lateral extensions that are C-folded or Z-folded prior to attachment to the exterior surface of the elastic inner layer. Freeland fails to cure this defect.

Thus, Applicants respectfully submit that Suprise and Freeland, alone or in combination, do not set forth each and every element of the claims as currently presented and thus do not anticipate or render said claims obvious.

Applicants respectfully request that all rejections be withdrawn for any or all of the above reasons.

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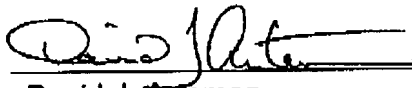
For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3016.

Respectfully submitted,

PAUL T. VAN GOMPEL ET AL.

By:   
David J. Arteman  
Registration No.: 44,512  
Attorney for Applicant(s)